

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

BONNA CANNON and MATTHEW
WHITNEY, individually and as natural
parents of C.W., a minor,

Plaintiffs,

v.

JBS USA, LLC d/b/a "JBS Swift &
Company," a foreign corporation,

Defendant.

NO. _____

**COMPLAINT
FOR DAMAGES**

Demand for Jury Trial

COME NOW the Plaintiffs, by and through their attorneys of record,
Denis Stearns of Marler Clark LLP, PS, and allege as follows:

I. PARTIES

1. The plaintiffs BONNA CANNON and MATTHEW WHITNEY,
husband and wife, reside in Selah, Yakima County, Washington. Plaintiffs

1 are the natural parents of the minor plaintiff, C.W., who is sixteen months
2 old.

3 2. The defendant, JBS USA, LLC, d/b/a "JBS Swift & Company"
4 (hereinafter "JBS Swift") is a foreign corporation organized and existing
5 under the laws of the state of Delaware, with its principal place of business in
6 Greeley, Colorado.
7

8 3. At all times relevant hereto, JBS Swift was a manufacturer and
9 seller of various beef products sold throughout the United States, including in
10 the State of Washington.
11

12 **II. JURISDICTION AND VENUE**

13 4. This Court has jurisdiction over the subject matter of this action
14 pursuant to 28 USC § 1332(a) because the matter in controversy exceeds
15 \$75,000.00, exclusive of costs, it is between citizens of different states, and
16 because the defendant has certain minimum contacts with the State of
17 Washington such that the maintenance of the suit in this district does not
18 offend traditional notions of fair play and substantial justice.
19

20 5. Venue in the United States District Court for the Eastern District
21 of Washington is proper pursuant to 28 USC § 1391(a)(2) because a
substantial part of the events or omissions giving rise to the plaintiffs' claims
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1 and causes of action occurred in this judicial district. Additionally, the
2 defendant was subject to personal jurisdiction in this judicial district at the
3 time of the commencement of the action.

4 **III. GENERAL ALLEGATIONS**

5 **JBS Swift *E. coli* O157:H7 Outbreak**

6
7 6. On June 24, 2009, the defendant announced a voluntary product
8 recall after it was notified by the Food Safety and Inspection Service (FSIS)
9 and the Centers for Disease Control (CDC) of a possible link between
10 reported illnesses caused by *E. coli* O157:H7 and the consumption of
11 defendant's beef products.

12
13 7. At least twenty-three people in nine states have been infected by
14 a genetically indistinguishable strain of *E. coli* O157:H7 linked to the
15 defendant's beef products. At least twelve people have have been
16 hospitalized as a result of their infections, and at least two developed
17 hemolytic uremic syndrome (HUS), including the minor plaintiff C.W.

18 **Plaintiff's Injuries**

19
20 8. On two occasions in late-April and mid-May 2009, the plaintiff
21 Bonna Cannon purchased JBS Swift beef products at a Costco location in

1 Union Gap, Washington. The beef products that Mrs. Cannon purchased on
2 these occasions were later included in the defendant's recall, described above.

3 9. The minor plaintiff, C.W., consumed the defendant's beef
4 products on multiple occasions in June 2009, including during the week
5 before onset of his *E. coli* O157:H7 illness.
6

7 10. On or about June 18, 2009, C.W. began to suffer from
8 gastrointestinal symptoms, including diarrhea and abdominal cramps. He
9 appeared generally uncomfortable and unwell throughout the day.

10 11. At approximately 2:00 AM on June 19, 2009, C.W.'s bouts of
11 diarrhea turned bloody, prompting his mother, Bonna Cannon, to rush him
12 immediately to the emergency department at Memorial Hospital in Yakima,
13 Washington. There, C.W. received intravenous fluids for hydration and anti-
14 nausea medications. He was discharged home with his mother at
15 approximately 7:00 AM the same day.
16

17 12. C.W.'s symptoms continued to worsen at home the morning of
18 June 19, 2009. Bonna Cannon, growing increasingly concerned, again rushed
19 her son to the emergency department at Memorial Hospital roughly three
20 hours after C.W. was first discharged. At this point, C.W. was writhing in
21 pain, and his bouts of diarrhea appeared to contain only blood.

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1 13. In the emergency department, nurses struggled for close to 45
2 minutes to establish a site in C.W.'s arm for the administration of intravenous
3 fluids, but they could not due to his extreme dehydration. Ultimately, C.W.
4 was admitted to the regular hospital for care.

5
6 14. While at Memorial Hospital, C.W. submitted a stool sample that
7 would ultimately test positive for *E. coli* O157:H7. Blood tests done on June
8 20, 2009 revealed that C.W.'s kidneys had begun to fail. Preparations began
9 for C.W.'s transfer to Seattle Children's Hospital, which is roughly three
10 hours away via ambulance.

11
12 15. C.W. was transferred to Seattle Children's Hospital in the late
13 afternoon on June 20, 2009. His mother rode with him in the ambulance, and
14 they arrived between 6:00 and 7:00 PM.

15 16. The next day, June 21, 2009, blood tests confirmed that C.W.
16 had developed hemolytic uremic syndrome (HUS). C.W. was taken to the
17 operating room, where a catheter was placed so that dialysis could begin
18 immediately.

19
20 17. Dialysis treatments commenced the evening of June 21, 2009,
21 and continued daily through July 4, 2009. C.W. received additional dialysis
treatments thereafter, but not on a daily basis.

1 18. During his hospitalization, C.W. also suffered from a prolapsed
2 rectum, and his hemolytic anemia required treatment with at least three
3 transfusions of packed red blood cells. C.W. was also transfused with
4 platelets on at least one occasion.

5
6 19. C.W. was finally discharged from Seattle Children's Hospital
7 the evening of July 8, 2009. His kidneys have not recovered. They are
8 currently functioning at approximately 30% of their original capacity. C.W.
9 also remains on high blood pressure medication, and his mother must inject
10 him daily with a hormone to stimulate red blood cell production.

11
12 20. C.W.'s *E. coli* O157:H7-positive stool sample was later
13 determined to match the strain of *E. coli* O157:H7 associated with the
14 defendant's outbreak and recall.

15 21. C.W. has suffered severe and permanent injury as a result of his
16 *E. coli* O157:H7-induced HUS illness. As a result, the plaintiffs have
17 incurred and will continue to incur medical expenses, have suffered and will
18 continue to suffer pain, loss of enjoyment of life, emotional distress, and
19 medical problems in the future as a direct and proximate result of C.W.'s
20 consumption of contaminated JBS Swift beef products.
21

1 **IV. CAUSE OF ACTION: STRICT LIABILITY**

2 22. By this reference, plaintiffs incorporate all of the foregoing
3 paragraphs as if each paragraph was set forth here in its entirety.

4 23. Defendant is a product manufacturer within the meaning of the
5 Washington Product Liability Act (“WPLA” or “the Act”), RCW
6 7.72.010(2). Defendant manufactured the beef product that caused the minor
7 plaintiff’s illness and the plaintiffs’ associated legal injuries. This beef
8 product was a product within the meaning of the WPLA, RCW 7.72.010(3).

9 24. Under the WPLA, the defendant owed a duty to the plaintiffs to
10 manufacture beef products that were reasonably safe in construction, that did
11 not materially deviate from applicable design specifications, and that did not
12 otherwise deviate in some material way from otherwise identical units in the
13 defendant’s product line.

14 25. Under the WPLA, the defendant owed a duty to the plaintiffs to
15 manufacture a product that conformed to its implied warranties, as defined by
16 RCW Ch. 62A, including, but not limited to, the implied warranty that
17 defendant’s beef products were fit for human consumption.

18 26. The beef product manufactured and sold by the defendant, which
19
20
21

1 caused the minor plaintiff's illness and the plaintiffs' associated legal
2 injuries, was not reasonably safe in construction, and did not conform to
3 defendant's implied warranties, because it was contaminated and adulterated
4 with, among other things, *E. coli* O157:H7.
5

6 27. Because the defendant's beef product was not reasonably safe in
7 construction, and did not conform to defendant's implied warranties, the
8 defendant is strictly liable to the plaintiffs for the harm proximately caused by
9 its contaminated beef product.
10

11 **V. NEGLIGENCE CLAIMS**

12 28. By this reference, plaintiffs incorporate all of the foregoing
13 paragraphs as if each paragraph was set forth here in its entirety.
14

15 29. The defendant manufactured, distributed and sold a product that
16 was not reasonably safe as designed or manufactured, within the meaning of
17 the WPLA, RCW 7.72.030(1).
18

19 30. The defendant was negligent in manufacturing, distributing, and
20 selling a product that was not reasonably safe because adequate warnings or
21 instructions were not provided including, but not limited to, the warning that
the beef product may contain *E. coli* O157:H7, and thus should not be

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1 provided for the purpose of human consumption.

2 31. The defendant had a duty to comply with all statutory and
3 regulatory provisions that pertained or applied to the manufacture,
4 distribution, storage, labeling, and sale of its food products including, but not
5 limited to, the Federal Food, Drug, and Cosmetics Act, which bans the
6 manufacture, sale, and distribution of any “adulterated” food. The defendant
7 breached this duty.
8

9 32. The plaintiffs are among the class of persons designed to be
10 protected by the statutory and regulatory provisions pertaining to defendant’s
11 manufacture, distribution, storage, labeling, and sale of its food, including
12 beef products.
13

14 33. The defendant owed a duty to the plaintiffs to use reasonable
15 care in the manufacture, distribution, and sale of its product, to prevent
16 contamination with *E. coli* O157:H7. The defendant breached this duty.
17

18 34. As a result of the defendant’s negligence, the plaintiffs suffered
19 severe and permanent personal injuries, as well as economic loss.
20
21

1 **VI. DAMAGES**

2 35. The plaintiffs have suffered general, special, incidental, and
3 consequential damages as a direct and proximate result of the acts and
4 omissions of the defendant, which damages shall be fully proven at the time
5 of trial, including, but not limited to: damages for loss of enjoyment of life,
6 both past and future; medical and medical related expenses, both past and
7 future; travel and travel-related expenses, past and future; emotional distress,
8 and future emotional distress; pharmaceutical expenses, past and future; wage
9 and other economic damages loss; loss of consortium; and other ordinary,
10 incidental and consequential damages as would be anticipated to arise under
11 the circumstances.
12
13

14 **VII. PRAYER FOR RELIEF**

15 WHEREFORE, plaintiffs pray as follows:
16

17 (1) That the court award the plaintiffs judgment against defendant in
18 such sums as shall be determined to fully and fairly compensate the plaintiffs
19 for all general, special, incidental and consequential damages incurred, or to
20 be incurred, by the plaintiff as the direct and proximate result of the acts and
21 omissions of defendant;

1 (2) That the court award the plaintiffs their respective costs,
2 disbursements and reasonable attorneys' fees incurred;

3 (3) That the court award the plaintiffs the opportunity to amend or
4 modify the provisions of this complaint as necessary or appropriate after
5 additional or further discovery is completed in this matter, and after all
6 appropriate parties have been served; and
7

8 (4) That the court award such other and further relief as it deems
9 necessary and proper in the circumstances.

10 SIGNED AND DATED this 16th day of July, 2009.

11
12 MARLER CLARK, L.L.P., P.S.

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